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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A(C). NO. 1036/ सन् 2007

(21)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

MISC. APPEAL (CLAIM) NO.1036/2007

APPELLANTS

1. Smt. Mala Singh, aged 24 years, w/o late Santosh Kumar Singh,
2. Yash Singh, aged 4 years, s/o late Santosh Kumar Singh,
3. Smt. Ramkumari Devi aged 55 years, M/o late Santosh Kumar Singh
4. Utkarsh Singh, aged 2 months, d/o late Santosh Kumar Singh

(All above residents of Singh Kirana Stores Shastri Nagar, Camp 1 Bhilai, P.S. Chhawani, Distt. Durg (C.G).

Versus

RESPONDENTS

1. Abharam Nishad, aged years, s/o Prabhuram Nishad, r/o Ramnager, Kumhari, Distt. Durg (C.G) – Driver of Offending Vehicle No.CG-07-ZC-2937)

2. Chamendra Kumar Agrawal, s/o late M.R. Awarwal, r/o Station Sqare, Kumhari, (Owner of Offending Vehicle No.CG-07-ZC-2937)

3. Regional Manager, New India Insurance Co., Thakker Chambers, Opposite Project Automobiles, Power House, Bhilai, Distt. Durg
(Insurance Company of Truck No.C.G.07/ZC/2937, Policy No.45900/31/05/01884)

D.B: HON'BLE SHRI L.C. BHADOO, J, &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

ORAL ORDER
(18.09.2007)

L.C.Bhadoo, J,

Shri Anurag Jha, counsel for the appellant.

Heard on admission.

The claimants have preferred this appeal u/s 173 of the Motor Vehicles Act 1988 for enhancement of the compensation amount being aggrieved by the award passed by the Addl. Motor Accident Claims Tribunal, Durg, in Claim Case No.149/2006.

The learned Tribunal vide impugned award has assessed the loss of dependency to the tune of Rs.32,000/- per year and by applying a multiplier of 16, Rs.5,12,000/- has been assessed as loss of dependency, Rs.30,000/- has been awarded for loss of love and affection, mental pain and suffering, loss of consortium and Rs.2000/- has been awarded for funeral expenses. Thus, in all the tribunal has granted a compensation of Rs.5,44,000/-.

The learned counsel for the appellants argued that the learned Tribunal has assessed the income on lower side as the deceased Santosh Kumar Singh was working as welder and he used to earn Rs.7200/- per month whereas the learned Tribunal has assessed the daily income to be Rs.160/- that too for 25 days in a month. He also submitted that a wrong multiplier has been applied; looking to the age of the deceased multiplier of 17 ought to have been applied. He further submitted that for loss of consortium, love

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

& affection, pain and suffering, only Rs.30,000/- has been awarded which is also on lower side.

Having heard learned counsel for the appellant, we have perused the award.

In Para 18, the learned Tribunal has discussed the evidence of the claimants regarding income of the deceased in which one of the co-worker of deceased Santosh Kumar namely Ramgulab Nishad has stated that both of them were working in B.E.C. Company, Urla as welders under Shiv Sharan, a contractor, they used to earn about Rs.160/- per day. Again in para 20, the records produced by the claimant have been discussed in which the presence of Santosh Kumar in the month of January 2006 was 25 days, whereas in the month of March was 19 days and in the month of Feb. 23 days. The wife of deceased Mala Singh has Stated that her husband used to get the salary daily and he used to get the salary for the days he used to work, as has been stated by Ram Gulab Nishad. She has further stated that on the weekly holidays and other holidays her husband was not going for work. In view of the above evidence, the tribunal has rightly assessed that Santosh Kumar used to work for 25 days only in a month.

As far as the argument of learned counsel for the appellant that he used to work overtime is concerned, that has been rejected by the Tribunal. In the first instance, the wife of the Santosh Kumar namely Mala Singh has not stated anything that he used to work overtime, more over, the over time work is such a work which is not a regular work, therefore, the tribunal has rightly not

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

considered the same as regular income of the deceased. Therefore, after deducting 1/3 expenses on the victim himself, remaining Rs.32,000/- has been taken into account as yearly loss of dependency, thereby the Tribunal has worked out the total loss of dependency as Rs.5,12,000/-, which is also just and reasonable.

As far as the question of multiplier is concerned, a perusal of the award shows that no dispute regarding the age of Santosh Kumar was raised before the Tribunal and the Tribunal based on the medical papers reached to the conclusion that the deceased was aged about 37 years, therefore, a multiplier of 16 has been applied. On that count also we do not find any infirmity or illegality in the conclusion or finding of the tribunal, therefore, the tribunal has rightly awarded Rs.5,12,000/- along-with interest @ 6% per annum.

Now coming to the arguments of the learned counsel for the appellant that only Rs.30,000/- has been awarded for pain and suffering, loss of consortium and love and affection, which is on lower side. Having considered the status of the family of the victim, Rs.30,000/- awarded by the tribunal under above heads appears to be just and reasonable and it cannot be said that it is on the lower side.

The Tribunal in all has awarded Rs.5,44,000/- as amount of compensation which cannot be said to be on the lower side. The compensation is just and reasonable, therefore, we do not find any ground for interference in the award of the tribunal.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	The appeal is liable to be dismissed and it is dismissed at the motion stage itself. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**